

DATE: 5/20/08 CASE NUMBER: 08-15770M-SD-001

USA vs. Rafael Heriberto Gutierrez-Esparza

U.S. MAGISTRATE JUDGE: JAY R. IRWIN #: 70BK

A.U.S. Attorney \_\_\_\_\_ INTERPRETER Ricardo Gonzalez  
LANGUAGE Spanish

Attorney for Defendant Brenda Sandoval (AFPD)

MATERIAL WITNESS(es): \_\_\_\_\_

MATERIAL WITNESS(es) state true name(s) to be: \_\_\_\_\_

Attorney for Material Witness(es): \_\_\_\_\_

DEFENDANT: ☐ PRESENT ☐ NOT PRESENT ☒ CUSTODY

DOA \_\_\_\_\_ ☐ Initial Appearance ☐ Appointment of counsel hearing held  
☐ Financial Afdvt taken ☐ Defendant Sworn ☐ Financial Afdvt sealed  
☐ Rule 5(c)(3) ☐ Defendant states true name to be \_\_\_\_\_. Further proceedings ORDERED  
in Defendant's true name.

**DETENTION HEARING:**

☐ Held ☐ Con't ☐ Submitted ☐ Reset

Set for:

Before:

- ☐ Defendant ordered temporarily detained in the custody of the United States Marshal  
☐ Defendant ordered released \_\_\_\_\_  
☐ Defendant continued detained pending trial  
☐ Flight risk ☐ Danger

**IDENTITY HEARING:**

☐ Held ☐ Con't ☐ Submitted ☐ Reset

☐ Waived

Set for:

Before:

☐ Warrant of removal issued.

**PRELIMINARY HEARING:**

☐ Held ☐ Con't ☐ Submitted ☐ Reset

☐ Waived

Set for:

Before:

- ☐ Probable cause found ☐ Dismissed  
☐ Held to answer before District Court

**STATUS HEARING:** re: Waiver of Venue

☒ Held ☐ Con't ☐ Reset

Set for:

Before:

Other: Government moves to dismiss complaint. Defense has no objection. Court grants motion and dismisses case without prejudice. Case is closed.

Recorded by Courtsmart (2 min)  
BY: Angela J. Tuohy  
Deputy Clerk

DATE: 5/19/2008 CASE NUMBER: 08-15770M-SD

USA vs. Rafael Heriberto Gutierrez-Esparza

U.S. MAGISTRATE JUDGE: JAY R. IRWIN #: 70BK

A.U.S. Attorney \_\_\_\_\_ INTERPRETER Ricardo Gonzalez  
LANGUAGE Spanish

Attorney for Defendant Brenda Sandoval (AFPD)

MATERIAL WITNESS(es): \_\_\_\_\_

MATERIAL WITNESS(es) state true name(s) to be: \_\_\_\_\_

Attorney for Material Witness(es): \_\_\_\_\_

DEFENDANT: ☒ PRESENT ☐ NOT PRESENT ☒ CUSTODY

DOA 5/17/08 ☒ Initial Appearance ☒ Appointment of counsel hearing held  
☐ Financial Afdvt taken ☒ Defendant Sworn ☐ Financial Afdvt sealed  
☐ Rule 5(c)(3) ☐ Defendant states true name to be \_\_\_\_\_. Further proceedings ORDERED  
in Defendant's true name.

**DETENTION HEARING:**

☐ Held ☐ Con't ☐ Submitted ☐ Reset

Set for:

Before:

☒ Defendant ordered temporarily detained in the  
custody of the United States Marshal

☐ Defendant ordered released \_\_\_\_\_

☐ Defendant continued detained pending trial

☐ Flight risk ☐ Danger

**IDENTITY HEARING:**

☐ Held ☐ Con't ☐ Submitted ☐ Reset

☐ Waived

Set for:

Before:

☐ Warrant of removal issued.

**PRELIMINARY HEARING:**

☐ Held ☐ Con't ☐ Submitted ☐ Reset

☐ Waived

Set for:

Before:

☐ Probable cause found ☐ Dismissed

☐ Held to answer before District Court

**STATUS HEARING:** re: Waiver of Venue

☐ Held ☐ Con't ☐ Reset

Set for: 5/20/08 at 1:00 pm

Before: Magistrate Judge Irwin

Other: Defendant declines to sign waiver of venue. Government moves for a continuance. Defense has no objection. Court grants motion and sets status hearing.

Recorded by Courtsmart  
BY: Angela J. Tuohy  
Deputy Clerk

# United States District Court

## SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

V.

Rafael Heriberto GUTIERREZ-Esparza

Citizen of Mexico

YOB: 1987

095734485

Illegal Alien

### CRIMINAL COMPLAINT

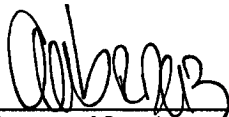
CASE NUMBER: 08-15770M-SD

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

### COUNT I

That on or about February 28, 2004, near San Ysidro, California in the Southern District of California, Defendant Rafael Heriberto GUTIERREZ-Esparza, an alien, did knowingly and willfully enter the United States at a time or place other than as designated by Immigration Officers of the United States of America, in violation of Title 8, United States Code, Section 1325 (Misdemeanor).

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

  
Signature of Complainant

Gabe Diaz

Senior Patrol Agent

Sworn to before me and subscribed in my presence,

May 19, 2008

at

Yuma, Arizona

Date

City and State

Jay R. Irwin, U.S. Magistrate

Name &amp; Title of Judicial Officer

Signature of Judicial Officer

STATEMENT OF FACTUAL BASIS

Defendant: Rafael Heriberto GUTIERREZ-Esparza

Dependents: None

**IMMIGRATION HISTORY:** The Defendant is an illegal alien.

**CRIMINAL HISTORY:**

<b><u>DATE</u></b>	<b><u>LOCATION</u></b>	<b><u>OFFENSE</u></b>	<b><u>DISPOSITION</u></b>
07/23/06	San Bernardino, CA	DUI Alcohol/Drug w/ Priors	Convicted jail, infraction, Fine

Narrative: The Defendant, a citizen of Mexico and illegally within the United States, was encountered by Blythe Border Patrol Agents near Blythe, California.

The Defendant was questioned as to his citizenship and immigration status. Agents determined that the Defendant is an undocumented National of Mexico and illegally in the United States.

The Defendant was transported to the Blythe station for processing. During processing, questioning and computer record checks the above criminal and immigration information was obtained as it relates to this Defendant.

The Defendant last entered the United States illegally without inspection near San Ysidro, California on February 28, 2004.

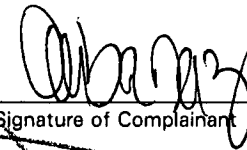
Charges: 8 USC§1325

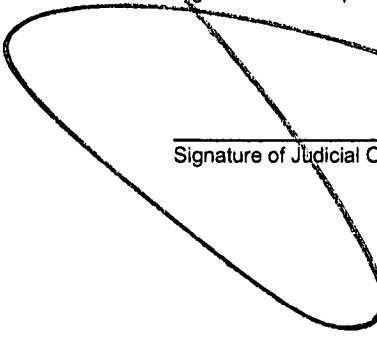
(Misdemeanor)

Sworn to before me and subscribed in my presence,

May 19, 2008

Date

  
\_\_\_\_\_  
Signature of Complainant

  
\_\_\_\_\_  
Signature of Judicial Officer

**Probable Cause Statement**

I, Senior Patrol Agent Gabe Diaz, declare under penalty of perjury, the following is true and correct:

**STATEMENT OF FACTUAL BASIS**

Defendant: Rafael Heriberto GUTIERREZ-Esparza

Dependents: None

**IMMIGRATION HISTORY:** The Defendant is an illegal alien.

**CRIMINAL HISTORY:**

<b><u>DATE</u></b>	<b><u>LOCATION</u></b>	<b><u>OFFENSE</u></b>	<b><u>DISPOSITION</u></b>
07/23/06	San Bernardino, CA	DUI Alcohol/Drug w/ Priors	Convicted jail, infraction, Fine

**Narrative:** The Defendant, a citizen of Mexico and illegally within the United States, was encountered by Blythe Border Patrol Agents near Blythe, California.

The Defendant was questioned as to his citizenship and immigration status. Agents determined that the Defendant is an undocumented National of Mexico and illegally in the United States.

The Defendant was transported to the Blythe station for processing. During processing, questioning and computer record checks the above criminal and immigration information was obtained as it relates to this Defendant.

The Defendant last entered the United States illegally without inspection near San Ysidro, California on February 28, 2004.

Executed on: May 18, 2008 Time: 10:21 AM

Signed: [Signature] Senior Patrol Agent

**Finding of Probable Cause**

On the basis of the facts presented in the foregoing Probable Cause Statement, consisting of one page, I find probable cause to believe that the defendant(s) named therein committed the offense on February 28, 2004 in violation of Title 8, United States Code, Section 1325.

Finding made on: Date May 18, 2008 Time 11:03

Signed: [Signature] United States Magistrate Judge